

Manager Disability Toolkit:

YOUR GUIDE TO UNDERSTANDING YOUR LEGAL RESPONSIBILITIES
RELATED TO INDIVIDUALS WITH DISABILITIES IN THE WORKPLACE

| Question: | Answer: |
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| What is disability discrimination? | Disability discrimination involves treating a “qualified individual with a disability” (either an applicant or employee) unfavorably because of his or her disability or perceived disability. Further, disability discrimination exists if an agency fails to provide a reasonable accommodation for the known physical or mental limitations of a qualified individual with a disability, absent undue hardship. Finally, if a manager assumes someone has a disability (without confirmation from the employee/applicant) and begins to treat them differently because of this perception can result in “regarded as” disability discrimination. |
| What is a disability? | A disability is a physical or mental impairment that <i>substantially limits one or more major life activities</i> . This is a legally defined term that has been defined through case law. Note: Not every physical or mental impairment rises to the level of a legally defined disability. |
| Who is an individual with a disability? | An individual with a disability is one who: <ul style="list-style-type: none">• Has a <i>physical or mental impairment</i> which <i>substantially limits</i> one or more major life activities; and/or• Has a record of such impairment; and/or• Is regarded as having such an impairment. |
| What do you mean by substantially limits? | Courts have defined what constitutes a <i>substantial limitation</i> . In general this is measured by frequency or duration of the limitation as compared to a reasonable person standard. |
| What is a major life activity? | “ <i>Major life activities</i> ” refers to those activities that are of central importance to daily life as defined by court decisions. |

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| <p>What are types of major life activities?</p> | <p>Courts have determined that <i>major life activities</i> include, but are not limited to: Walking, learning, seeing, working, hearing, concentrating, speaking, performing manual tasks, breathing, lifting, sleeping, interacting with others, caring for oneself, eating, standing, sitting, reaching, lifting, bending, breathing, reading, thinking, communicating, the operation of a major bodily function , etc. This is only a partial list and courts are constantly adding to this listing.</p> |
| <p>What do you mean by an individual who has a “record of an impairment.”</p> | <p>This is an individual who has a history of, or has been misclassified as having a mental/physical impairment. An individual with a <i>record of an impairment</i> may be entitled, absent undue hardship, to a reasonable accommodation if needed and related to the past disability. Eg. An employee with an impairment that previously limited, but no longer substantially limits a major life activity may need leave or a schedule change to permit them to attend follow-up appointments with a health care provider.</p> |
| <p>Who is a “qualified individual with a disability?”</p> | <p><i>A qualified individual</i> with a disability is a person with a <i>disability</i> who:</p> <p>Satisfies the requisite skill, experience, education, or other requirements of the position that the individual holds or seeks, and who can perform the <i>essential functions</i> of the position with or without reasonable accommodation.</p> |
| <p>What are “essential functions”?</p> | <p>Courts have ruled that <i>essential functions</i> are the basic job duties that an employee or applicant must be able to perform, with or without reasonable accommodation.</p> <p><i>Essential functions</i> are the fundamental, crucial job duties performed in a position. They do not include marginal functions, which are extra or incidental duties. A function may be essential because:</p> <ol style="list-style-type: none"> 1. The position exists to perform that function. 2. There are a limited number of employees available who could perform that function. <p>The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.</p> |

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| <p>What law(s) are violated by disability discrimination?</p> | <p>Disability discrimination violates Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Americans with Disability Act (ADA), and the Americans with Disability Act Amendment Act (ADAAA) of 2008.</p> |
| <p>What is a reasonable accommodation?</p> | <p>A reasonable accommodation is any change in the work environment (or in the way things are customarily done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits or privileges of employment.</p> |
| <p>What are some types of reasonable accommodations?</p> | <p>Reasonable accommodations might include:</p> <ul style="list-style-type: none"> • Providing readers or interpreters • Assistive Devices • Modifying work sites • Modifying work schedules • Flexi-time • Accessible facilities • Telework • Reassignment (accommodation of last resort) |
| <p>How may a manager receive a request for a reasonable accommodation?</p> | <p>A reasonable accommodation request may be made orally or in writing. The employee does not need to say specifically “I need a reasonable accommodation.” They can simply say they have a health issue and need some assistance to be successful in performing their job. This alone triggers the responsibility of the manager to start understanding what might be needed and to take action on the request. Keep in mind that the request can come from the employee, or their family member, or their health care provider. No matter who it comes from the manager has a responsibility to take action.</p> |

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| <p>What should a manager do after a reasonable accommodation request has been made?</p> | <p>The manager and employee or applicant should promptly engage in an “<i>interactive process</i>” to determine whether and what type of an accommodation is appropriate. When engaging in the process, the manager and employee or applicant will consider the essential duties, the functional limitations imposed by the disability or medical condition, and the effectiveness of the various options for reasonable accommodation that could mitigate the effects of those functional limitations.</p> |
| <p>May an Agency ask an applicant or employee for medical information in support of an accommodation request?</p> | <p>Yes, if the disability is not obvious or already known to the manager, then limited medical information related to the request may be obtained from the employee. Obvious conditions include those disabilities that are readily apparent – mobility issues, deafness, blindness. In the case of obvious conditions the interactive process should be around the accommodation itself and how to provide it. If the individual has provided such medical information with regard to past accommodation requests, then the manager does not need to ask for it again.</p> |
| <p>What should I do with the medical documentation that I receive from the employee?</p> | <p>All staff who review and evaluate medical documentation should comply with the Rehabilitation Act rules concerning the use and confidentiality of applicant and employee medical information. In summary, the medical documentation should be kept in a separate confidential folder held under lock and key and should not be mixed in with other employee files or other administrative files.</p> |
| <p>When is an Agency obligated to provide a reasonable accommodation?</p> | <p>An Agency must provide a reasonable accommodation to the <u>known</u> physical or mental disability of a qualified applicant or employee with a disability unless it can be shown that the accommodation would impose an “undue hardship” on the operation of the business. Whether a particular accommodation will impose an undue hardship must always be determined on a case-by-case basis.</p> |

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| <p>When does an Agency not have to provide a reasonable accommodation?</p> | <p>An Agency does not have to provide an accommodation if the individual does not meet the legal definition of an individual with a disability as described above. In addition, the agency does not have to provide an accommodation that would pose a threat of harm to the employee, co-workers, clients and others. If the accommodation would result in an <i>undue hardship</i> then the agency does not have to accommodate. This is a determination that can be sometimes based on whether it would be extensive, or substantially disruptive or would fundamentally alter the nature or operation of the business.</p> <ul style="list-style-type: none"> Note that cost is not a likely defense for the NIH. Courts will look at the budget of the Health and Human Services to determine whether the agency could afford to accommodate. It will not simply be the budget of your office, Department, Institute or Center. Therefore, the likelihood of being able to successfully argue cost as an undue hardship to a Court is not very good. |
| <p>Does the manager have to grant the specific request that the employee is seeking?</p> | <p>No, as long as the manager is offering an <i>effective</i> accommodation to allow the employee to perform the essential functions of their position, then the manager does not have to offer the specific item(s) being requested by the employee.</p> |
| <p>Does the manager have to reduce production standards for individuals with disabilities?</p> | <p>If the production standards are <i>essential</i> to the position, then the manager does not have to reduce production standards in order to accommodate an employee with a disability. The idea is to provide the employee with an accommodation that allows them to perform the <i>essential functions</i> of the position. And this would include production standards that are <i>essential</i>.</p> |
| <p>What course of action can an employee take if denied a reasonable accommodation?</p> | <p>If an employee believes their reasonable accommodation request was denied due to discrimination they have a right to file an EEO complaint and may contact EDI within 45 calendar days of the denial.</p> |

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| <p>What course of action should you take if an individual with a disability informs you that they are being subjected to workplace harassment?</p> | <ol style="list-style-type: none"> 1. The manager must initiate an administrative inquiry process by fully interviewing the employee with a disability and getting the names of third party witnesses. 2. The manager should interview all of the third party witnesses and any other witnesses that are identified in the interview process. 3. The manager should collect all documentary evidence that any of the witnesses have, including the individual with a disability. This would include email correspondence. 4. If the manager determines that the individual was being harassed on the basis of their disability, they should take corrective action to ensure that the harassment does not continue. This can include disciplinary action. 5. The manager should contact employee and labor relations within the Office of Human Resources to get further guidance. 6. The administrative inquiry should be conducted in an expedited fashion. A contractor can be used to conduct the inquiry or the manager can conduct it themselves. 7. The manager should maintain a record of relevant events and communications between all parties involved in the event another incident arises and further action is needed. |
| <p>Is an employee or applicant who brings a disability discrimination claim protected from retaliation/ reprisal?</p> | <p>Yes. The NIH is committed to promoting and maintaining a work environment free from discrimination and retaliation. Reprisal for participation in the EEO process is prohibited. This includes those who seek a reasonable accommodation for their disability. If an employee wishes to file an EEO complaint of reprisal he or she may contact EDI within 45 calendar days of the alleged occurrence(s) of retaliation discrimination.</p> |

| Area: | Key Points: |
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| Protection | <ul style="list-style-type: none"> • Must be a <i>qualified individual with a disability</i> to be protected from employment disability discrimination under the law. |
| Disability | <ul style="list-style-type: none"> • Determination of whether an individual has a disability is made on a case-by-case basis. |
| Practices and activities | <ul style="list-style-type: none"> • Disability discrimination is prohibited in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment. It applies to recruitment, advertising, tenure, layoff, leave, fringe benefits, and all other employment-related activities. |
| EEO activity | <ul style="list-style-type: none"> • Making a request for a reasonable accommodation is considered participation in the EEO process. |
| Reasonable Accommodation | <ul style="list-style-type: none"> • A <i>qualified individual with a disability</i> may request a reasonable accommodation at any time during the application process or during the period of employment. • Once a reasonable accommodation request is made the manager and the <i>qualified individual with a disability</i> should engage in an interactive process to clarify what the individual needs and identify the appropriate reasonable accommodation. • The reasonable accommodation provided must be effective, not the accommodation of choice. |
| Performance | <ul style="list-style-type: none"> • A request for a reasonable accommodation does not require an employer to excuse past misconduct or poor performance. • An employer is not required to lower quality or production standards to make an accommodation; nor is an employer obligated to provide personal use items such as glasses or hearing aids. |
| Job functions | <ul style="list-style-type: none"> • An employee or applicant must be able to perform the <i>essential functions</i> of their position or desired position with or without reasonable accommodation. |

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| Confidentiality | <ul style="list-style-type: none"> • Medical information about all applicants and employees must be kept confidential. |
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What You Should Know, But Probably Don't

Persons discriminated against because they have a known association or relationship with an individual with a disability are also protected under the discrimination laws.

Case Examples

| Addresses: | Case: |
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| Impermissible Dissemination of Medical Information | <i>Price v. USPS</i> |
| Disability-Based Harassment | <i>Rainbolt v. Department of Transportation</i> |
| No Disability Discrimination: Failure to Meet Qualification Standards | <i>Patrick Jean-Julien v. Department of State</i> |
| Failure to accommodate | <i>Haggard v. United States Postal Service</i> |

Contacts:

WHO TO ASK ABOUT WHAT

[Division of Complaints Management and Resolution](#)

[Identify Your Formal Complaints Specialist](#)

[Office of Equal Opportunity and Diversity Management contact](#)

[NIH Ombudsman contact](#)

Resources:

WHERE TO GO FOR MORE INFORMATION

[Title VII of the Civil Rights Act of 1964](#)

[The ADA: Questions and Answers](#)

[The ADA: Your Responsibilities as an Employer](#)

[NIH Policy Manual 2204-Reasonable Accommodations](#)

[HHS Reasonable Accommodation Policy and Procedures Manual](#)

[EEOC Enforcement Guidance: Reasonable Accommodation](#)

[EEOC Increased Focus on ADA Enforcement in 2013](#)

[Applying Performance And Conduct Standards To Employees With Disabilities](#)

[Questions and Answers: Promoting Employment of Individuals with Disabilities
in the Federal Workforce](#)

[The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act
of 1964](#)

[Your Employment Rights as an Individual With a Disability](#)

[Job Applicants and the ADA](#)

[Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA](#)

[ABCs of Schedule A Documents](#)

[Work At Home/Telework as a Reasonable Accommodation](#)

[Deafness and Hearing Impairments in the Workplace and the Americans with
Disabilities Act](#)

[Blindness and Vision Impairments in the Workplace and the ADA](#)

[Diabetes in the Workplace and the ADA](#)

[Epilepsy in the Workplace and the ADA](#)

[Persons with Intellectual Disabilities in the Workplace and the ADA](#)

[Cancer in the Workplace and the ADA](#)

[Obtaining and Using Employee Medical Information as Part of Emergency
Evacuation Procedures](#)

[Veterans and the ADA: A Guide for Employers](#)